Scott II—27—30,000—4-11-46.

Home (1947) Department.

MS SERIES.

G.O. NO. 3964

Dated 29 X 47

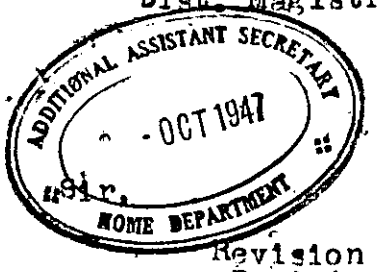
P. 28/(E)

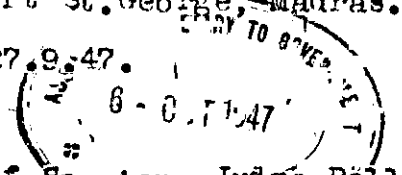
[Despatch Abstract.]

[redacted] appeal – appeal agst acquittal [redacted] of Sessions judge Bellary (A. 23/47) [redacted]ications – Sanctioned.

From K.N.Anantaraman,Esq.,I.C.S.,
Dist. Magistrate,Bellary.

To
The Secretary to the Government (Home Department)
Fort St.George, Madras.





No.C.1917/47 Mag.dated 27.9.47.

Revision - C.A.23/47 on the file of Sessions Judge Bellary - Revision of orders passed by the Sessions Judge Bellary by moving the High court in revision - requested.

In C.C.No.62/47 on the file of the SubDivisional Magistrate Bellary the Circle Inspector of Police, C.I.D. branch, Bellary filed a charge-sheet against the accused (1) Illur Thippaiah and (2) Illur Ramanjulu for an offence under Secs.7 and 8 of Essential Supplies (Temporary Powers) Act 1946. After trial theSubDivisional Magistrate Bellary sentenced A.1 to pay a fine of Rs.150/- in default to undergo Rigorous imprisonment for 3 months and A.2 to pay a fine of Rs.50/- in default to undergo Rigorous Imprisonment for one month. Against these orders the accused preferred an appeal to the Sessions Judge Bellary. The Sessions Judge allowed the appeal and reversed the sentence of the lower court on the ground that the prosecution had not proved, the guilt of the accused beyond all reasonable doubt, that there was no proof either of the order by which the price was alleged to have been fixed or of its due publication and that neither the order nor any document showing how it was published had been exhibited.

p.t.o.

P.2 cwks

The matter was referred to the Public Prosecutor Bellary. He is of opinion that under the Essential Supplies(Temporary powers) Act 1946 the provisions of Rule 119 of the D.C.I.Rules are omitted and that all rulings under the D.C.I.Act dos not apply so far as the new Act is concerned in view of the omission from the Act the provisions of Rule 119. He further aids that oral evidence has been adduced as to the existence of the order by which the price of jaggery was fixed and its due publication and that the court has to take judicial notice of such orders and their publication. He is of opinion that this is a fit case for moving the High Court in revision. I entirely agree with his views.

I therefore request that the Government may be pleased to move the High Court in revision to revise the orders of the Sessions Judge passed in C.A.23/47 on the file of his court.

Sessions judgment & order (2) Two copies of the judgments of the lower court, appellate and P3 infra opinion of the Public Prosecutor Bellary are enclosed.

nsn. 28.9.47.

Collector.
&Dist.Magte

1 Enc: 3.

Endorsement No. 69327 F/47-1 dated 16 x w Home department

Referred to the Public Prosecutor, Madras, for remarks on the proposal of the District Magistrate, Bellary. PP1-2 and 3 of the judgment P1 & (2) 19-8-47 3 months expire 19-11-47

The reply to this reference should be sent not later than 1-11-47.

For Secretary to Government

To
The Public Prosecutor,
Madras.
(with e.P. and judgment copies at (2) to be returned with reply).

Copy of G.I.No. 221, dated 25-9-1947, from the Public Prosecutor and Government Pleader, Bellary.

Criminal Revision - C.As. 23, 24, 33, and 38 of 1947, on the file of the Sessions Court, Bellary.

I have gone through the appellate judgments, the connected records and the opinion of Mr. Raghunatha Rao, Asst. Public Prosecutor, No. 1.

I agree with the remarks of A.P.P. No. 1. In fact, I contended before the learned Sessions Judge that under the Essential Supplies (Temporary Powers) Act of 1946, the provisions of rule 119 of the Defence of India Act are omitted. All rulings are under the D.C.I. Act and do not apply so far as the new Act is concerned in view of the omission from the Act the provision of rule 119. Oral evidence in every case has been adduced that the notification complained against has been duly published and the court can take judicial notice of such publication. But the learned Sessions Judge holds that the notification ought to have been filed in evidence and I think he is not right in saying so.

In addition to these 4 cases, the Sessions Judge has acted in the same view in many other cases that came before him subsequently and has allowed the appeals. I shall direct matters have to be taken to the High Court for getting the valuable important question of interpretation of law.

All the records are herewith sent back and the Asst. Public Prosecutor may kindly be informed.

N. Lakshmaiah, 29.9.47.
Public Prosecutor.

---True copy---

C.A.629-3-48.

Public Prosecutor's Office,
Madras, dated 9-11-1948.

Forwarded to the Secretary to Government, Home Dept.

Madras with ref. to:

G.C.MS.No.3964,Home, dated 29th Octr.1947
G.C.MS.No. 4180,Home, dated 13-11-1947
" 4182,Home,dated 13-11-1947
" 4043,Home,dated 3-11-1947
" 4276,Home,dated 19-11-1947
G.C.No.R.3199, Home, dated 11-12-1947
G.C.MS.No. 4691,Home,dated 19-12-1947.

A. S. Sivakamanathan
Asst Public Prosecutor.

To

The Secretary to Government,
Home Department,Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Friday, the twenty-ninth day of October,
One thousand nine hundred and forty-eight.

Present:

The Honourable Mr. Justice SUBBA RAO.

Cri-inal Appeal Nos.629, 631, 632, 633 and 663 of 1947 and 22 and 23 of 1948.

C.A.No.629 of 1947:

The Public Prosecutor. — Appellant.

1. Illur Thippayya.
2. Illur Ramanjulu. — Respondents. (Accused).

Appeal under section 417 of the Code of Cri-inal Procedure, 1898, against the acquittal of the aforesaid respondents (accused) by the Court of Session of Bellary Division in C.A.No.23 of 1947, on 19th August 1947 preferred against the judgment of the Court of the Sub Divisional Magistrate of Bellary in C.C.No.62 of 1947 on 20th May 1947.

C.A.No.631 of 1947:

The Public Prosecutor. ... Appellant.

M.J.Nagayya. ... Respondent. (1st Accused).

Appeal under section 417 of the Code of Cri-inal Procedure, 1898, against the acquittal of the aforesaid respondent (1st accused) by the Court of Session of Bellary Division in C.A. No.33 of 1947 on 9th September 1947 preferred against the judgment of the Court of the Additional ~~X~~ Class Magistrate of Bellary in C.C.No.271 of 1947 on 31st July 1947.

C.A. No.632 of 1947:

The Public Prosecutor. ... Appellant.

Basalingamma Gowd. ... Respondent. (5th Accused).

Appeal under section 417 of the Code of Cri-inal Procedure 1898, against the acquittal of the aforesaid Respondent (5th,

accused) by the Court of Session of Bellary Division in C.A.No.32 of 1947 on 23rd September 1947 preferred against the judgment of the Court of the Additional I Class Magistrate of Bellary in C.C.No.49 of 1947 on 15th July 1947.

Cr.A.No.683 of 1947:

The Public Prosecutor. ... Appellant.

Velchand. ... Respondent. (2nd Accused).

Appeal under section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the aforesaid respondent (2nd accused) by the Court of Session of Bellary Division in C.A.No.34 of 1947 on 9th September 1947 preferred against the judgment of the Court of the Additional I Class Magistrate of Bellary in C.C.No.71 of 1947 on 19-8-1947.

Cr.A.No.663 of 1947:

The Public Prosecutor. ... Appellant.

1. Hanumanthappa.
2. Koruba Channappa.
3. Veerapura Yerrappa.
4. Koruba Siddappa.
5. Ganji Basanna.

Respondents. (Accused 1 to 5).

Appeal under section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the aforesaid respondents (accused 1 to 5) by the Court of Session of Bellary Division in C.A.Nos.36 and 37 of 1947 on 25th September 1947 preferred against the judgment of the Court of the Additional I Class Magistrate of Bellary in C.C.No.223 of 1947 on 28th July 1947.

Cr.A.No.22 of 1948:

The Public Prosecutor. ... Appellant.

1. Rudrappa.
2. Anjenappa.

Respondents. (Accused).

Appeal under section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the aforesaid respondents (accused by the Court of Session of the Bellary Division in C.A.No.39 of 1947 on 1st October 1947 preferred against the judgment of the Court of the Additional I Class Magistrate, Bellary in C.C.No.225 of 1947 on 23-7-1947.

C.A.No.23 of 1948:

The Public Prosecutor. ... Appellant.

Ganna Onkarappa. ... Respondent. (Accused).

Appeal under section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the aforesaid respondent (accused) by the Court of Session of Bellary Division in C.A. No.25 of 1947 on 28th August 1947 preferred against the judgment of the Court of the Sub Divisional Magistrate of Bellary in C.C.No.63 of 1947 on 28th May 1947.

These appeals coming on for hearing on Thursday, the 7th day of October 1948, upon perusing the petitions of appeals and the records of the evidence and the proceedings before the lower courts and upon hearing the arguments of the Public Prosecutor the appellant in all the case and of Mr. B.V.Ramanarasu, Advocate for the respondents (accused) in C.A.No.629 of 1947 and of Mr. V.T.Rangasami Ayyangar for Mr. P.Ram Reddi, Advocate for the respondent (2nd accused) in C.A.No.633 of 1947 and of Mr. P. Chandra Reddi and Mr. K.Venkataratnam for 1st Respondent (1st accused) in C.A.No.663 of 1947 and of Mr. M.V.Rangaraja, Advocate for respondent (accused) in C.A.No.23 of 1948 and respondents in C.A.No.631 of 1947, 632 of 1947 and respondents 2 to 5 in C.A.No.22 of 1948 not appearing in person or by in C.A. 663/47 and respondent advocate and the appeals having stood over for consideration till this day, the Court delivered the following:

JUDGMENT: These are appeals by the Public Prosecutor against the acquittal of the accused in all the cases. The accused in

all the appeals were charged under sections 7 and 8 of the Essential Supplies (Temporary Powers) Act 1946 for having contravened the various orders passed by the Government. The following tabular statement shows the orders contravened by the accused in the various cases:

Accused in C.A.No.629 of 1947. ..	G.O.No. Mis.1026 Food dated 19th Novr. 1946.
Accused in C.A.No.23 of 1948. ..	Do.
Accused in C.A.No.631 of 1947. ..	S.P.No.626 dated 15-5-46.
Accused in C.A.No.632 of 1947. ..	Do.
Accused in C.A.No.663 of 1947. ..	Do.
Accused in C.A.No.22 of 1948. ..	Do.
Accused in C.A.No.633 of 1947. ..	Clause 4(1) of the Madras Cloth (Dealers) Control Order, 1946.

The first Court convicted all the accused but in appeal the convictions were set aside mainly on the ground that there was no proof of the orders or their due publication. The Public Prosecutor contended that the proof of the said fact was not necessary and the lower court should have taken judicial notice of the said facts under section 57(1) of the evidence Act. The learned counsel for the accused argued that that section of the Evidence Act has no application to the facts to be proved in this case and in any view the lower court had rightly, in the exercise of its discretion, refused to take judicial notice of the facts without the production of the necessary documents.

The question to be decided in this case turns upon the construction of section 57 of the Evidence Act. The relevant provisions of section 57 read as follows:-

"The Court shall take judicial notice of the following facts:-

(1) All Indian laws . . . . . .

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so".

The scheme of the Evidence Act is clear. Generally all the facts alleged have to be proved in the manner provided by the Act but there are three exceptions; facts admitted, facts presumed and facts of which the Court should take judicial notice need not be so proved. Section 57 enumerates the facts of which the Court should take judicial notice. Under Section 57(1) the Court should take judicial notice of all Indian laws.

"Indian Laws" is defined by the General Clauses Act under section 3(27-a), it includes any law, ordinance, order, bye-law rule or regulation passed or made at any time by any competent Legislature, authority or person in British India. The question for consideration is whether the orders contravened by the accused are orders within the meaning of this definition. If so, section 57(1) of the Evidence Act could apply. Under section 3(1) of Act XXIV of 1946, the Central Government so far as it appears to it to be necessary or expedien for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by notified order provide for regulating or prohibiting the production, supply and distribution thereof, and trade and commerce therein. Under section 4 of the same Act, the Central Government may by notified order direct that the power to make orders under section 3 shall be exercisable by such officer or authority subordinate to the Central

Govern-ent or such Provindial Governeent or such officer or authority subordinate to a Provindial Governeent, as may be specified in the direction. Section 7(1) prescribes the penalties for contravention of the said orders.

The aforesaid orders in contravention whereof the accused acted in all the cases were issued in strict co-pliance with the provisions of this Act by the Govern-ent or by authority or persons duly authorised by the Govern-ent and they have also been duly notified in the manner provided by the Act. They are clearly orders made by a competent authority or person in British India within the meaning of section 3(27-a) of the General Clauses Act and therefore they are part of Indian law If the said orders come under the definition of Indian Laws, the provisions of section 57 are attracted and the Court should take judicial xxx notice of the same.

But the question still re-ains whether this is a fit case for interference in these appeals. Though a Court should take judicial notice of the facts mentioned in section 57, it could only take such notice if uni-peachable books or docu-ents are put before it or otherwise accessible for its reference. Under the last paragraph of the section the Court is given the discretion to refuse to take judicial notice of any fact unless such person calling upon the Court to take judicial notice of such fact produces any such book or docu-ent as it may be necessary to enable it to do so. In this case no such book or docu-ent was placed before the lower Court for its reference to enable it to satisfy itself that such order or notification was in existence. In its discretion the lower Court refused to take judicial notice as neither the orders nor the docu-ents showing the publication of such

orders

orders were placed before it. It is therefore impossible to say that the discretion exercised by the Lower Court is either perverse or illegal.

In the result all the appeals are dismissed

(Sd) V.T.Krishnaswami,

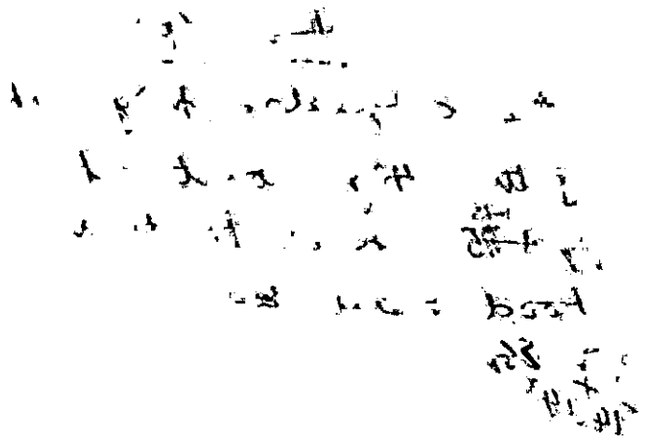
Assistant Registrar, App. Side.

/True Copy/

Sub-Assistant Registrar, A.S.

To

1. The Sessions Judge, Bellary (with records).
2. The Sub Divisional Magistrate, Bellary.
3. The Addl. I Class Magistrate, Bellary.
4. Nos.2 and 3 through the Pt. Magistrate, Bellary.
5. The Public Prosecutor, High Court, Madras (2 copies).
6. The Inspector-General of Police, Madras.



Dated 13--10--1948.

PUBLIC PROSECUTOR'S OFFICE, HIGH COURT MADRAS.
Date 9/11
No.

JUDGMENT

C.A.Nos.629, 631, 632, 633 and 643 of 1947 and 22 and 23 of 1948.

Dismissing the appeals against the acquittal of the accused in C.A. Nos.23, 33, 32, 34, 36, 37, 39 and 25 of 1947 on the file of the Sessions Court, Ballary Division.

DEPUTY SECRETARY
16 NOV 1948
49860
FOOD DEPARTMENT

(F2 - 95050)

Home (F)

The appellate judgment of the High Court at Bangalore is for perusal, Food may see

14/11/48 15.11.48.

15/11 Food

Food

F

Home U.O.No. 95050 F/1

15.11.48

33
28/12

Home Deptt

Memo No. 95050 F/48-2 dated 23.12.48

Criminal appeal - C.A. Nos. 629, 631, 632 633 and 663 of 1947 and 22 and 23 of 1948 on the file of the High Court, Madras

Appellate judgment —

— " —

The attention of the D.M. Bellary is invited to the judgment of the High Court in the appeals cited and he is requested to report why the Prosecution failed to produce before the lower court proof of ~~issue of~~ issue of publication of the notifications of Orders Contravened in these cases, when

Ibid

Ht 1-15 Cf.

they were held in that court.

2. A reply to this reference should be sent not later than ~~15~~ 20 1.4.47.

To

The D.M. Bellary
(R.D. 16.7.46)

Pr Despd
28.2

19

L.Dis.C.No.118/49 Magl.

FROM E.C. ALLARDICE ESQ.,I.C.S.,
DISTRICT MAGISTRATE, BELLARY.

TO THE SECRETARY TO GOVERNMENT,
HOME DEPARTMENT,FORT ST.GEORGE,MADRAS.

ASSISTANT SECRETARY TO GOVERNMENT 16 MAR 1949 HOME DEPARTMENT

Sir,

22175 17.3.49

Sub:- CRIMINAL APPEAL C.A. NOS 629, 631, 632, 633 and 663 of 1947 and 22 & 23 of 1948 on the file of the High Court, Madras - Appellate Judgment.

Ref:-Government Memo No.95050-F/48-2,Home Department, dated 23-12-48.

***

1 The Asst.Public Prosecutor and the Public Prosecutor Bellary were of opinion that the prosecuting staff need not produce proof of publication of the notifications or issue of orders contravened in these cases, on the ground that the court should take judicial notice of the said notifications or orders under section 57 (1) of the Evidence Act. It was under these circumstances that proof of Publication was not produced in the trial court, although oral evidence was let in to show that the notifications were duly published.

2 When the Sessions Judge allowed the appeals, the matter was taken to the High Court as it involved an important question of interpretation of law.As the High Court finally gave a decision agreeing with the Sessions Judge, Bellary, circular instructions were issued to the Prosecuting staff in this district that they should in future, produce before the lower court proof of publication of all notifications etc.

16/3/49

DISTRICT MAGISTRATE.

D.O.M.3374-1.

Legal Department,
Fort St. George,
Madras, 9,
24th March 1949.

My dear Aingar/Raghunathan,

Please let me know whether the judgment of Subba Rao, J. in Criminal Appeal No.629 of 1947 and connected appeals (Illur Thippayya and certain other persons) is being reported in the Indian Law Reports. Madras Weekly Notes
A copy of the judgment is enclosed for your ready information.

If the judgment is reported, it will help to bring it to the notice of the prosecuting staff, which Government consider very desirable.

With kind regards,

Yours sincerely,

(K.V. Rajagopalan)
Secretary to Government.

1) Sri R.N.Aingar, Bar-at-Law,
Editor, Indian Law Reports,
High Court Buildings, Madras.

2) Sri N.T. Raghunathan, M.A., B.L.,
Advocate and Editor, M.W.N.,
No.11, Daivasikhamani Mudr. Road,
Royapettah, Madras, 14.

The Madras Weekly Notes

(22)

N. T. RAGHUNATHAN, M.A., B.L,
N. T. RAMANUJAM, M.A., B.L.,
Advocates & Proprietors

HIGH COURT Office:
58, LAW CHAMBERS.

"Vaijayanti" Lakshmipuram,
ROYAPETTAH

Madras ....25-....3-....1949.

To,

Sri. K.V.Rajagopalan M.A.,M.L.,
Secretary to Government.
Legal Department.
Fort St. George.
Madras.

Dear Sir,

Your D.O. No. 3374 -1 dated 24th March 1949. The Judgment of Subba Rao. J in Criminal Appeal No. 629 of 1947 and connected appeals has already been reported at page 103 of 1949 Madras Weekly Notes and page 31 of 1949 Madras Weekly Notes Criminal.

Yours sincerely,

N. T. Ramanujam.

Associate Editor.

Patrit up
of avan Lakh
A.R.
26/3

D.O

My dear [illegible],

Office of the Editor,
I.L.R. Madras Series,
High Court Buildings,
Madras.D:28-3-1949.

The Judgment of Subba Rao J. in Crl. App. No.629 of 1947 referred to in your D.O. letter dated 24th instant has been taken up for reporting.

With kind regards,

Yours sincerely,

Editor.

D.O.No. 337-21.29/3

Sri. K.V. Rajagopalan,
Secretary to Government,
Legal Department,
Fort St. George,
Madras.

My dear Ainger,
Many thanks for your D.O. of yesterday. I hope the report of Subba Rao J. will appear in an early issue of the I.L.R. Yrs. sincerely 29/3.

D.O.No.3374-2.

Legal Department,
Fort St. George,
Madras,
29th March 1949.

My dear Aingar,

Many thanks for your D.O. of yesterday. I hope the report of Subba Rao, J. will appear in an early issue of the I.L.R.

Yours sincerely,

Sri R.N. Aingar, Bar-at-Law,
Editor, Indian Law Reports,
High Court Buildings,
Madras.

C. No 49860 3/48 Subt= criminal Appeal - Appellate judgment of the High court, Madras.

To D.S.

Please see the appellate judgment of the High Court, Madras at P P 7-15 Cf, and the Home Department notes at P 16 Cf. The accused in all the Cases were charged for offences committed under Sections 7 and 8 of the Essential Supplies (Temporary Powers) Act, 1946. Two of the Cases relate to the Contravention of the orders passed in G.O. Ms. No. 1026, Food, dated 19.11.1942, fixing the prices of Sugar and Jaggery. The accused in these Cases were convicted by the Court of the Sub-Divisional Magistrate of Bellary but on appeal, the Court of Session, Bellary Division set aside all the Convictions mainly on the ground that there was no proof of the orders & their publication Mad. before the Public Prosecutor, Bellary appealed to the High Court, Madras, against the acquittal of the accused by the Sessions Court, Bellary. The High Court reviewing the Cases, ruled that though a Court shall take judicial notice of the facts mentioned in Sec. 57 of the Evidence Act, as contended by the Public Prosecutor, Bellary before the Session Court, it could only take such notice if unimpeachable books or document are put before it or otherwise accessible for reference. The High Court further ruled that in this Case no such book or document was placed before the lower Court for its reference to enable it to satisfy itself that such order or notification was in existence. In its discretion, the lower court refused to take judicial notice as neither the orders nor any document showing the publication of such orders was placed before it. The High Court therefore dismissed the appeals.

Submitted that the guilt of the accused in

F1

these cases was proved. They were, however, acquitted in appeal merely on the ground that the Public Prosecutor, Bellary, failed to produce the notification published with G.O. No. 1026, Food, dated 19.11.46 before the Court. M

It seems desirable to issue general instructions to all concerned to see that all the relevant orders and notifications are produced before the Court in future. (b) A

The Hindu's comments may be sent for necessary information and if desirable the appropriate instructions are issued by the Home through Dev.

Food No. ac 4986 dy/48, 25.11.48 X

Dev/ Home

Dev. Dept. 125779

M Krishnaswamy Nair 25/11/48

10 A.S.

Notes of Food dept. from p. 1 ante may be perused. This dept. may also agree with 'A' above and the file passed on to Home dept.

CPP 4/12/48 Home

Dev. No. 125779 M3/48 4.12.48

Home Dept.

(Previous note of Home at p. 16 ante).

With reference to the appellate

SPECIAL ASSISTANT SECRETARY TO GOVERNMENT 27 NOV 1948 DEVELOPMENT DEPARTMENT

ASSISTANT SECRETARY TO GOVERNMENT W2248 6 DEC 1948 HOME DEPARTMENT

appellate judgment (at pp 3-15 ante) of the High Court in C.A. Nos. 629, 631, 632, 633 and 663 of 1947 and 22 and 23 of 1948 on its file, the Food dept. have suggested that the question of issuing appropriate instructions to all concerned to see that all the relevant orders and notifications are placed before the Court in future, may be considered in consultation with the Legal dept Dev. dept agree with the suggestion.

2. It seems desirable to consult the Dy. Bellary in the first instance as to why the ~~Prosecution in the cases~~ the question failed to produce before the lower Court proof of notification or orders published or issued. ~~Go MD 1926 Food dated 19.11.46. Subject to orders~~, a draft memo is subd. for approval

Food D Section 12/12/48 14.12.48 20 50

pp 17-18 ante

[Issued as Memo. No. 9505 F/48-2 d 23/12/48]

p. 19 ante

From the D.R., Bellary, L. Dis. C No. 118/49 Rgl. d 15/2/49

The notes of Food and Dev Depts at pp 1-2 ante and this Dept's note at pp 2 above may be perused. The case has been sent to this Dept. w.r.to 'x' ~~in this note~~ on p. 2 ante

R. Before taking action as suggested at 'x' on p. 2 ante, the D.R., Bellary was asked to ascertain and report why the prosecution failed to produce before the Sessions court evidence of the publication of the notifications or orders, etc for contravening

which the accused were charged. The D.P., Bellary has stated that both the P.P. and A.P.P. were of opinion that such ~~proof~~ proof need not be produced before the court w.r.to sec. 57(1) of the Evidence Act, under which the court ~~may~~ should take judl notice of ~~certain things~~ those notifications or orders. It is also reported that oral evidence was let in to show that the notifns. etc were duly published. He has pointed out that in view of the High court's decision in the appeals, circular instructions had been issued to the prosecuting staff in his dt. in the matter.

Para 1 on p. 19 ante

... dt. ...

for example of

3. It may be mentioned in this connection that occurrences of this nature will be few and far between, ~~and for all practical purposes may be taken to be nil~~. There is also no doubt that the ruling of the High court in this case will be adhered to on failure by all the subordinate courts in the mofussil in which case the prosecution will receive necessary instructions in the matter from the Local authorities. Just like the D.P., Bellary, other DPs can also issue necessary instructions to their prosecuting staff, if they consider such a course desirable. ~~It seems too early to draw any conclusions in the matter.~~ In the circumstances it does not seem necessary to take any action as suggested by Food Dept. at 'x' on p. 2 ante and agreed to by Dev.

4. Legal may see for remarks, if any.

18/3/49 Sd/- Illegible 19.3 Legal

18/3/49

ASSISTANT SECRETARY 21 MAR 1949 S/E LEGAL DEPARTMENT

Jhro D section

Sd/- 19.3.49

(P. 70)

Homeo.o.mo 9505D/Leg-2 21.3.49

LEGAL DEPARTMENT.

The judgment of the High Court at pages 3-15 c.f. has been reported in 1949 M.W.N. at page 103. The Editor of the M.W.N. has ~~also~~ also stated that the judgment has been reported in 1949 M.W.N. (Criminal) at page 31. The Editor, I.L.R. has also stated that the judgment has been taken up for reporting.

27833 2.4.49

ASSISTANT SECRETARY TO GOVERNMENT 2-APR1949 HOME DEPARTMENT

M

Although it is (very) likely that the prosecuting staff may become aware of the decision on a perusal of the law reports it seems better to invite specifically the attention of all D.Ms. other than the D.M. of Bellary, to the judgment and ask them to bring it to the notice of the prosecuting staff in their district, so that they may not miss the report and prosecutions fail by reason of a failure to produce ~~to~~ before the court, proof of publication of notifications, etc.

Legal No. 3374/49-1
1/4/49.

29 3.49

M above hardly seems necessary. But there is no objection to it.
JCM. 1-4-49.

Home Dept.

Please see this Dept's note on pp 3-4 ante and that of Legal above. Legal Secy has stated that instructions on the lines suggested at 'M' above hardly seem necessary but, however, considers that there is no objection to it. In the circumstances, it is for consideration whether any instructions need be issued to the prosecuting staff. If it is considered unnecessary, the case may be retd. to Food. Dept.

9/4/49 11.4.49

As the A.P.Ps supplied with a copy of the M.W.N. (Crim.)

Thro' D section
12.4.49

PTO

b/

F

Refee: A.S query on p.s ante:-

A&P.Ps, both permanent and temporary, are supplied with copies of the Madras Weekly Notes (Criminal). Please see Go Ms. No 85, Public (Police), dated 13-2-35 with para 2 β of Go Ms. No. 1359, Home, d. 16.3.40 and Go Ms. No. 811, Home, d. 13.3.45.

cf. paras 5, p4 ante
9 (X)
α - p3 of (Y)
β - p210 (L)
δ - p254 (X)

As the judgment has been reported in the M.W.N (Crim.) it seem unnecessary to issue any instructions in the matter

20/4

Agree

A

20/4

Ford(G)dept.

To D.S:

I refer (this department's previous note at pages 1-2 above). Home.O.no.95050.F/49 dt. 21.4.49

Please see the C.F. from page 17 to page 27, and the note of the department from page 2 above. With reference to this department's suggestion at X on page 2 above, the Legal and Home departments in view of A above consider that it is unnecessary to issue any instructions to District Magistrates to see that all the relevant orders and notifications are placed before the Court in future. In the circumstances this department may concur with Legal and Home departments. This case was sent originally to this department for perusal, by Home dept. This may therefore be returned to that department now.

DEPUTY SECRETARY 21 APR 1949 15796 FOOD DEPARTMENT

For views taken by the

21/4/49

21.4.49

22/4

Home

G.O. Ms. 1026, Food, d. 19.11.
Cir (B) issued in Food

Food.Ho.No.15746.G/49.
22.4.49

ASSISTANT SECRETARY TO GOVERNMENT 22 APR 1949 25/4/49 HOME DEPARTMENT

Home dept

(j) A[illegible] Ex Board

Please see the orders on p 6 ante.
No further action is called for in this file.
The papers may be lodged and filed with
G.O. Ms No. 3964, Home, dt 29.X.47 at (O)

SE
29.4.49

Passed
SE

V.L.ETHIRAJ ESQ., C.I.E.,
Bar-at-Law.,
Public Prosecutor, Madras.

To
The Secretary to Government,
Home Department. Madras.

Opn.No. 103/47, dated 20th October 1947.

Sir,

Sub: Appeal against acquittal - C.A.23/47, Sessions Judge, Bellary - C.C.62/47, S.D.M.Bellary - Forwarding opinion.

With reference to Endorsement No.69827 F/47-1, Home dated 10-10-47, I have the honour to forward herewith my opinion in the above matter.

2. The papers received for reference are returned herewith.

I have the honour to be,
Sir,
Your most obedient servant.

V. L. Ethiraj

PUBLIC PROSECUTOR.

Opinion.

Para 6 p 24(4) The Sessions Judge, Bellary set aside the conviction and sentence

passed by the Sub Divisional Magistrate, Bellary on the accused for the offence under sections 7 and 8 of Essential Supplies (Temporary Powers) Act 1946. The accused is alleged to have sold jaggery at a price higher than the one fixed by Notification. The acquittal by the Sessions Judge is based on the fact that there was no proof of the order by which the price was fixed or of its due publication. It could have been better if the copy of the Notification had been filed in the trial court. The notification is published in the Official Gazette. The Sessions Judge could have taken judicial notice of the same. The acquittal by the Sessions Judge is not correct. I am of opinion that an appeal against acquittal is likely to be successful.

Public Prosecutor.

R/

20-10-47

I Pleas. Amt in G.O.Ms.No 3748, H. P.S. dt 4-10-47]

C. No. 69327 F/47

9

Home dept

G.O.Ms.No. 396H. dt 29-x-47

Criminal appeal - Appeal against acquittal - Bellary dt. - Sessions Judge, Bellary - C.A. No. 23 of 1947 - Application sanctioned.

Read:-

PP1-2 C.F. From the D.M., Bellary No. C 1917/47 - Mag. dt 27-9-47.

PP7-8 C.F. From the Public Prosecutor, Madras Gpn. No. 103/47 dt 20-10-47.

ORDER:-

A on p8 C.F. Under section 417 of the Code of Criminal Procedure, 1898, the Public Prosecutor, Madras is requested to present an appeal to the High Court against the acquittal by the Sessions Judge, Bellary of the appel- T.

in C.A.No. 23 of 1947 on his file

(4)

27/10/47

To

The Public Prosecutor
Madras

(with copy of PP1-2CF, P3C-F
in Crl. and judgment
copies at (4) in Cr.R.C.)

The D.M., Bellary

Note:- The draft order above follows the opinion of the P.P., Madras at pp7-8CF.

27/10/47.

Date of despatch
19-8-47

3 months expire
19-11-1947